


entitled to a filing date. A petition under 37 CFR 1.182 and the required petition fee, including an amendment submitting the necessary omitted material, requesting that the necessary omitted material contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement, is required in order to accord the application a filing date as of the date of deposit of the continuation or divisional application. An amendment submitting the omitted material and relying upon the incorporation by reference will not be entered in the continuation or divisional application unless a decision granting the petition states that the application is accorded a filing date and that the amendment will be entered.¹

Incorporation by reference is intended as a safeguard to protect an applicant who in a continuation or divisional application has omitted a "portion" of the application on filing.² Here, petitioner omitted drawings in their entirety. As at least one drawing was necessary to accord the instant application a filing date, no filing date was accorded at the time of filing. However, petitioner properly incorporated prior application no. 10/054,033 by reference. In addition, petitioner submitted the omitted drawings and paid the \$130 petition fee. While petitioner has not specifically submitted an amendment seeking entry of the drawings, the petition will be construed as such. Accordingly, the above identified application is entitled to a filing date of November 10, 2003.

In view thereof, the petition is GRANTED.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of November 10, 2003, using the application papers received in the Office on that date and the 11 sheets of drawings supplied with the petition filed February 19, 2004. Applicants will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.



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¹ MPEP 201.06(c) (emphasis added).

² See id.